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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,713	04/24/2001	Rodger H. Rast	EVRHeadset_01	6278

26994 7590 11/14/2006

RODGER H. RAST
11230 GOLD EXPRESS DRIVE
SUIT 310 MS 337
GOLD RIVER, CA 95670

EXAMINER	
MEI, XU	

ART UNIT	PAPER NUMBER
2615	

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/841,713	RAST, RODGER H.	
	Examiner	Art Unit	
	Xu Mei	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4,5,7-15,17-19 and 21-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *8-15,17-19 and 21-25* is/are allowed.

6)☒ Claim(s) *1,4,5,26 and 27* is/are rejected.

7)☒ Claim(s) *7* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to the applicant's amendment dated 07/17/2006.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garvis (US-5,647,011) in view of Wilde (US-3,869,584).

Regarding claim 1, Garvis (in Figure 1) discloses a headset or headphone 11 for providing selective acoustical isolation to a wearer 10, including a first and second earpiece configured for being positioned proximal the ears of the wearer; an audio conversion device (speakers) within each of the first and second earpiece that is configured to receive electrical energy and convert it to sound directed at the ear canals of the wearer (see Fig. 1, the left and right speakers for the headset are inherently included); a microphone 32 is electronically connected or attached to the first and second earpiece and configured to register sound energy occurs external to the earpiece and to convert that sound energy to an external sound signal; a selection device (switch or reset) the headset configured for activation by the wearer, and a signal conditioning circuit (see fig. 5) configured to amplify and couple the external sound

signal received at the microphone to the audio conversion device of each the first and second earpiece in response to activation of the selection device wherein the headset enters a hearthrough mode which amplifies ambient sounds at first and second earpieces to reduce acoustical isolation which improves the ability of the headset wearer to hear external sounds (see col. 4, lines 22-39). What does Garvin not teach is a microphone attached to each of the first and second earpiece.

However, a headset that having a microphone attached to each of the first and second earpiece is old and well known in the art. Wilde discloses such well known headset (see Figs. 1a, 1b) that including a microphone 3 attached to each of the first and second earpiece 1 in order for a wearer to binaurally perceive ambient noise (see Abstract). It would have been obvious to one of ordinary skill in the art to combines the teaching of Garvis with the teaching of Wilde by having a microphone for each of the first and second earpiece to have binaural ambient noise sensing in order to provide an improved headset that is allowing wearer to accurately perceive ambient noise.

Regarding claim 4, Garvis discloses the headset with speakers coupled an audio device (audio broadcast programming (radio), CD player etc.), which provides support of programming including music, and audio communications (see col. 3, lines 35-44).

Regarding claim 5, Garvis discloses the interrupting, squelching or muting the audio device (col. 4, lines 57-63), which constitutes attenuating.

4. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garvis in view of Wilde as applied to claim 1 above, further in view of Short et al (US-4,538,296, hereafter, Short).

Regarding claim 26, the improved headset by the combinations of Garvin and Wilde is discussed in claim 1 above. What do the combinations of Garvin and Wilde not teach is a timing mechanism for the headset. Short discloses a protection circuit for limiting sound pressure level provided by transducer loads, such as headphones that including a timing mechanism for automatically resetting sound pressure level of the headphone (see Fig. 1 and col. 6, line 57-col. 7, line 6) to prevent ear damage caused by listening to headphone or audio transducers at excessively loud sound levels (see col. 1, lines 4-9). Therefore, it would have been obvious to one of ordinary skill in the art to modifies the headset of Garvin and Wilde with a protection circuit for limiting sound pressure level provided of the headphone that including a timing mechanism for automatically resetting the sound pressure level of the headphone as taught by Short in order to prevent ear damage caused by listening to headphones or audio transducers at excessively loud sound levels.

5. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garvis in view of Wilde as applied to claim 1 above, further in view of Chen (US-6,993,140).

Regarding claim 27, the improved headset by the combinations of Garvin and Wilde is discussed in claim 1 above. What do the combinations of Garvin and Wilde not teach is the signal conditioning circuit including a mode of active noise cancellation.

However, headset or headphone device that including active noise cancellation function is old and well known in the art. Chen discloses such well known headphone that having an anti-noise circuit system (Fig. 3a) for the purpose of eliminates the noise that hurt human ears while in a high noise polluted environment (see Figs. 1, 6 and col. 1, lines 4-20). Therefore, it would have been obvious to one of ordinary skill in the art to modifies the headset of Garvin and Wilde with an anti-noise circuit system as taught by Chen in order to eliminates the noise that hurt human ears while in a high noise polluted environment.

Allowable Subject Matter

6. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 8-15, 17-19 and 21-25 are allowed.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xu Mei whose telephone number is 571-272-7523. The examiner can normally be reached on maxi flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Xu Mei
Primary Examiner
Art Unit 2615
11/10/2006